AMERICAN CABLE ASSOCIATION

Matthew M. Polka, President and CEO
Direct Dial: 412-922-8300, Ext. 14
E-Mail: mpolka@americancable.org

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VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte Presentation* Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, MB Docket No. 15-158

Dear Ms. Dortch:

On December 11, 2015, members of the American Cable Association ("ACA") and the National Cable Television Cooperative ("NCTC") Alan Morse, President, Ritter Communications Holdings, Inc.; John Colbert, President & CEO, Fidelity Communications; David Armistead, General Counsel & Secretary, Hargray Telecommunications Co.; Michael Morrison, Director of Video Services, Cincinnati Bell; and Chris Kyle, VP Industry Relations & Regulatory, ShenTel Telecommunications Co.; along with Rich Fickle, NCTC President & CEO; Jeff Nourse, NCTC SVP Legal & Regulatory Affairs; and Monica Desai, partner, Squire Patton Boggs, counsel to NCTC; and the undersigned spoke via teleconference with the following Media Bureau staff: William Lake, Bureau Chief; Nancy Murphy, Associate Bureau Chief; Steve Broeckaert, Senior Deputy Division Chief, Policy Division; Kathy Berthot, Attorney, Policy Division and Lynne Montgomery, Attorney, Policy Division. The purpose of the meeting was to discuss problems in the video marketplace, particularly the challenges faced by small and medium-sized cable operators in obtaining access to video programming on fair, reasonable and non-discriminatory terms, and the impact of these problems on these providers' ability to serve their customers' interests.

For several years, ACA and its members have been telling the Commission that the video marketplace is broken.[1] During the meeting, ACA and NCTC stressed that the ability of small and

[1] Most recently, ACA filed comments in this proceeding highlighting the impact steadily increasing video programming costs are having on the multichannel video programming distributor ("MVPD") marketplace and its implications for the ability of smaller and medium-sized MVPDs to continue in the video distribution business and finance additional broadband deployment. See Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, MB Docket No. 15-158,

medium-sized cable operators to negotiate programming agreements on fair, reasonable and non-discriminatory terms is frustrated more and more each year by large programming conglomerates, which are demanding ever-increasing rates and coercing carriage of unwanted programming bundles on widely distributed levels of service. These demands, which increasingly include no exceptions for the hundreds of small "channel locked' cable systems that are unable to carry additional channels due to capacity constraints, are forcing members to make tough choices in their carriage negotiations: either accept unreasonable prices and terms or drop channels. Neither option is satisfactory for consumers or small cable operators. The "overpay or drop" dilemma facing smaller systems can be seen as a barometer for the industry as larger, more powerful pay television providers will likely face the same bundling and pricing demands and bandwidth constraints in the future.

NCTC described how current carriage renewal negotiations between NCTC and AMC Networks ("AMCN") is emblematic of these problems. In these negotiations, AMCN has demanded acceptance of a highly unfavorable deal, including the forced carriage of unwanted programming networks and discriminatory pricing, and engaged in a number of unfair and egregious negotiating tactics designed to coerce NCTC members into accepting it. NCTC members serving more than a million subscribers are poised not to renew their deal with AMCN, and each day more NCTC members are considering discontinuing carriage. A comparable exodus took place following last year's Viacom negotiation, even after NCTC successfully negotiated a contract renewal.

AMCN insists upon forced bundling. AMCN is insisting that NCTC members distribute five low-rated programming networks in order to distribute AMC, their only network with meaningful ratings. Moreover, AMCN is demanding that these channels appear on widely distributed tiers and insists these carriage obligations apply to all NCTC members. Many NCTC member cable operators simply do not have the system capacity to acquiesce to these demands.

This is all curious because AMCN has declared in their SEC 10-K filing that they do not bundle services.[2] CEO Josh Sapan recently declared at an investor conference[3] that every channel should stand on its own, be valuable and be priced well. In actuality, though, AMCN has refused to provide NCTC with an unbundled list of prices on a per channel basis despite NCTC's numerous requests. This is particularly galling given the fact that Cablevision, which has common ownership with AMCN, sued Viacom for illegally forcing the cable operator "to pay for

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Comments of the American Cable Association at 2-4 (filed Aug. 21, 2015) (documenting continued small and rural system closures ACA believes are primarily attributable to increasing video programming costs).

[2] 2014 10-K filing, p. 13: "We do not currently require distributors to carry more than one of our national programming networks in order to obtain the right to carry a particular national programming network."

[3] Annual UBS Global Media and Communications Conference, December 7, 2015.

and receive little-watched channels in order to get the channels [consumers] actually want." Despite Cablevision characterizing the Viacom practice as "illegal, anti-consumer and wrong," AMCN's common owners have done nothing to stop AMCN from behaving *exactly the same way* with respect to AMCN's negotiation with NCTC.

AMCN insists upon discriminatory pricing and carriage. Furthermore, NCTC's members are experiencing discriminatory pricing. AMCN is proposing they pay twice the rate it is charging other cable operators for the same service. AMCN is also insisting that NCTC members distribute its programming networks at a more broadly penetrated level than other larger cable operators. AMCN's outrageous demands serve to limit the ability of NCTC members, whom all compete against larger MVPDs, to offer a competitive service to consumers in the market.

Further, AMCN insists that NCTC members pay per-subscriber fees for its services based on NCTC members' total number of video subscribers instead of the number of subscribers receiving each service – meaning some consumers may pay for services they would not receive. NCTC has never agreed to such a demand. This demand seems designed to protect AMCN from losses due to cord shaving, and when combined with AMCN's demands to carry unwanted programming, it hinders smaller operators' ability to serve customers that want a low-priced "skinny" package of programming that can be combined with over-the-top content they may purchase elsewhere.

AMCN engages in outrageous bargaining tactics. NCTC members have been subject to unconscionable conduct by AMCN as a means to pressure them into to acceding to AMCN's unreasonable demands. For instance, months before their contract with NCTC members was set to expire, AMCN started running deceptive "crawls" on the AMC network telling viewers that they would imminently lose the network. Moreover, in order to run these crawls, AMCN re-tuned NCTC operators' receivers under a false pretense that they were performing "routine maintenance" – an act that, in some cases, caused service outages. Lastly, AMC removed cue tones from select operators' AMCN programming feeds, which prevented these operators or their agents from inserting local advertising into commercial breaks. This resulted in a loss of revenue for these affected operators, and despite multiple requests, AMCN has refused to return these cue tones.

As this example clearly illustrates, the video marketplace is broken in a way that harms consumers. In closing, NCTC and ACA asked that the Commission take their concerns into account in its assessment of the status of competition in the market for the delivery of video programming and of further reforms to its rules governing the video marketplace.

Sincerely,

Matthew M. Polka
President and CEO
American Cable Association

cc: William Lake, Bureau Chief
Nancy Murphy, Associate Bureau Chief
Steve Broeckaert, Senior Deputy Division Chief, Policy Division
Kathy Berthot, Attorney, Policy Division
Lynne Montgomery, Attorney, Policy Division